IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

MFA.No. 272 of 1998

(AGAINST O.P(MV) NO. 1129 OF 1990, MACT, PERUMBAVOOR)

APPELLANTS - LEGAL REPRESENTATIVES OF DECEASED PETITIONER:
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1. **LAKSHMY, W/O. AYYAPPAN KOCHUKUTTAN (LATE) RADHAMANDIRAM, MUDAVOOR P.O., MUVATTUPUZHA.**

2. **A. AMBUJAKSHY, RAVI VIHAR, MUDAVOOR P.O., MUVATTUPUZHA.**

3. **L. MEENAKSHY, KOMALAYAM, KUMARAMANGALAM, THODUPUZHA.**

4. **RADHA K.A., BINDU NIVAS, EAST KADATHY, MARKET P.O, MUVATTUPUZHA.**

5. **A. GOPALAKRISHNAN, RADHAMANDIRAM, MUVADOOR P.O., MUVATTUPUZHA.**

6. **K. SANTHAKUMARI, MANIKUNNEL, KANJIRAMATTOM, THODUPUZHA.**

7. **BABY KAMALAM, PUTHALATHU, EAST KADATHY, MARKET ROAD, MUVATTUPUZHA.**

8. **A. SUSHAMA, SUSHA BHAVAN, MUDAVOOR P.O, MUVATTUPUZHA.**

9. **A. SURESH, RADHAMANDIRAM, MUDAVOOR P.O., MUVATTUPUZHA,**

10. A. RAJAN, DO. DO.

11. PUSHPA A., DO. DO.

BY ADV. SRI.K.V.RAJU

RESPONDENTS:
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1. JOLLY, S/O. VARKEY CHACKO, KIZHAKKEVEETTIL EAST MARADY P.O., MUVATTUPUZHA.

2. CHACKO, S/O. VARKETY, DO. DO.

3. UNITED INDIA INSURACNE COMPANY LTD., DIVISIOINAL OFFICE, MUVATTUPUZHA.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.N.S.MOHAMMED USMAN
SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 272 OF 1998

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Dated this the 7th day of March, 2007

J U D G M E N T

The legal representatives of the original claimant in O.P(MV) No.1129 of 1990 on the file of the Motor Accidents Claims Tribunal, Perumbavoor are the appellants. Predecessor-in-interest of the appellants, late Ayyappan Kochukuttan, met with an accident at about 10.45 a.m. on 12.10.1986. He himself filed the petition claiming compensation. During the pendency of the proceedings before the Tribunal, the claimant died. Appellants filed a petition to get themselves impleaded in the said petition. That was allowed by the Tribunal and directed the appellants to carry out the amendment. They did not carry out the amendment. So the petition was dismissed by the Tribunal. Challenging that order, this appeal is filed.

2. Learned counsel appearing for the appellants has submitted that when an impleading petition is allowed, it is the duty of the office of the Tribunal to carry out the amendment and the Tribunal should not have dismissed the claim petition for a

default committed by the office of the Tribunal. Learned counsel appearing for the respondents submitted that initially the claim petition was dismissed as abated. Subsequently the appellants filed a petition to implead themselves after setting aside the abatement and that petition was allowed. Thereafter there was negligence on the part of the appellants.

3. I do not think it necessary to consider whether there was negligence and if so its consequence, in this case. Amendment effected was only to the cause title. Office of the Tribunal could have carried out the same or it should have given one more opportunity to the appellants to cure the defect, if any. It is to be noted that the original claimant who filed the claim petition died pending the proceedings and the appellants are his widow and children. Considering the entire facts and circumstances of the case, I am of the view that the order passed by the Tribunal is illegal and liable to be set aside.

4. Learned counsel for the respondents submitted that the claim petition was filed in the year 1990 and in case the petition is allowed a huge amount by way of interest from the

date of filing of the claim petition will have to be paid for the negligence of the appellants. That is a contention which the respondents will have to raise before the Tribunal.

In the result, the appeal is allowed. The order passed by the Tribunal dismissing the claim petition is set aside. The Tribunal is directed to take O.P(MV) No.1129 of 1990 back to file and dispose of the same in accordance with law after giving a brief but reasonable opportunity to the appellants to carry out the amendment and adduce evidence, if any.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 272 OF 1998

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J U D G M E N T

7TH MARCH, 2007